IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/12/2002

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THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN

C.R.P.(P.D.)No.858 of 2002
and
C.M.P.No.6954 of 2002

S.T.Sundaram .. Petitioner

-Vs-

1. Veerateswaran

2. The Chairman,
Karaikkal Planning Authority
Karaikkal
Pondicherry State

3. The Member Secretary,
Karaikkal Town Planning
Authority, Karaikkal,
Pondicherry State. ... Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C. against O.S.No.26 of 2002 on the file of the Additional District Judge, Karaikkal.

For Petitioner : Mr.R.Thiagarajan,
Sr.Counsel for
Mr.K.Mohanram

For Respondents: Mr.S.Sethuratnam,

Sr.Counsel for
Mr.S.Sounthar (R.1)
Mr.T.Murugesan, Govt.
Pleader (Pondicherry)
(RR.2 and 3)

:ORDER
The Civil Revision Petition is filed under Article 227 of the Constitution of India against the suit in O.S.No.26 of 2002 on the file of the Additional District Judge, Karaikkal.

2. The facts of the case are as follows:

The petitioner being the owner of the land in T.s.Nos.161, 164, 165 and 166 in ward No.F, Block No.38 at Nehru street, Karaikkal town obtained an approved plan No.604/Kpa/98 dated 17.3.1999 from the respondents 2 and 3 for putting up a Kalyana Mandapam. In accordance with the approved plan, the petitioner had actually completed the construction of the Kalyana Mandapam even in the year 2001. The first respondent is residing at D.No.219, Church street, Karaikkal and the Kalyana Mandapam has been put up at Door No.58, Nehru Street, which is on the north east of the first respondent's property. The petitioner by sale deed dated 18.6.2001 purchased the property bearing old Door No.218 lying immediately on the north of Door No.219 owned by the first respondent and on the west of the Kalyana Mandapam put up by him.

3. It is the further case of the petitioner that there is a litigation between the first respondent and vendor, the owner of the old Door No.218 and the litigation is still pending and as a power of attorney holder of the vendor, the petitioner is looking after the litigation. Enraged by the purchase of the suit property by the petitioner, the first respondent with a mala fide intention sent telegrams dated 22.10.2001 and 24.10.2001 to the respondents 2 and 3 to the effect that the Kalyana Mandapam has been put up in violation of the approved plan and requested the respondents 2 and 3 to take suitable action under the provisions of the Pondicherry Town and Country Planning Act, 1969, (hereinafter referred to as "the Act, 1969") against the petitioner. The second respondent by letter dated 24.10.2001 replied to the first respondent that there is no violation in putting up the construction of the Kalyana Mandapam by the petitioner.

4. It is the further case of the petitioner that suppressing the above facts, the first respondent filed a writ petition in W.P.No.1859 of 2002 before this Court for issuance of a writ of mandamus to direct the respondents 2 and 3 to remove the illegal construction put up in violation of the planning permit and rules and regulations. That writ petition was disposed of by this Court on 31.1.2002 by directing the third respondent to inspect the premises and dispose of the representation made by the first respondent within four

weeks from the date of receipt of copy of the order. Pursuant to the order made by this Court, the third respondent sent a communication on 26.3.2002 to the first respondent informing about the action to be taken. However, the first respondent, filed a suit in O.S.No.26 of 2002 before the Additional District Judge, Karaikkal for a mandatory injunction directing the respondents 2 and 3 to remove the construction alleged to be in deviation of approved plan and obtained an order of interim injunction in I.A.No.80 of 2002 restraining the respondents 2 and 3 from giving "no objection certificate" for running the Kalyana Mandapam and also obtained an order for appointment of an Advoc ate commissioner in I.A.No.81 of 2002 to inspect the Kalyana Mandapam and file a report. Since the petitioner is aggrieved by the orders so passed and also aggrieved of filing of the civil suit before the Additional District Court, Karaikkal, filed the present civil revision petition.

5. Mr.R.Thiagarajan, learned Senior Counsel appearing for the petitioner has contended that the suit as filed before the Civil Court is not maintainable in law in view of the bar of Civil Court's jurisdiction under Section 75 of the Act, 1969. The Civil Court has no jurisdiction to entertain the suit. He further contended that the interim orders passed in I.A.Nos.80 and 81 of 2002 viz., appointment of Commissioner and interim order of injunction restraining the respondents 2 and 3 from giving "no objection certificate" to the petitioner for running the Kalyana Mandapam would amount to injuncting the statutory authorities from performing their statutory function. When the authorities under the Act sanctioned the planning permit in accordance with the provisions of the Act, 1969 and the construction has been carried out by the petitioner by scrupulously following the sanctioned plan, an advocate commissioner, who is not well informed about the technicalities cannot by his inspection alone find out whether there is violation of the terms of the sanctioned plan without being equipped with the basic materials for that purpose. He contended that the averments in the affidavit filed in support of the writ petition filed before this Court has been transformed into plaint and the present civil suit has been filed, which is nothing but gross abuse of process of law, in the sense, having approached this Court under Article 226 of the Constitution of India rightly, having obtained an order in the writ petition directing the statutory authorities to inspect the construction put up by the petitioner and take appropriate action under the provisions of the Act, 1969, the first respondent abused the process of law by filing civil suit with the same allegations. If there is any violation of the sanctioned plan, the respondents 2 and 3, the statutory authorities are empowered to take action against the petitioner. Further, by filing writ petition, the first respondent caused to be issued a command from this Court by way of mandamus. The authorities, respondents No.2 and 3 are bound to take action against the petitioner if any violation is found in the construction. The authorities so empowered by the statute and further issued with the command of this Court in the writ petition having found that there is no violation in putting up of the construction, did not take any action. Even assuming that the respondents 2 and 3 failed to take any action on having found that there are violations in spite of their statutory duty and in spite of the direction of this Court, it would be proper for the first respondent to approach this Court for ventilating his grievance. Without doing so, with a

mala fide intention and abuse of process of law, approached the Civil Court which has no jurisdiction to entertain a suit, having regard to Section 75 of the Act, 1969 and obtained an interim order, which order has also been passed in total violation of the mandatory provisions of Order 39 Rules 2 and 3 of the Civil Procedure Code. He further contended that the very institution of the suit is a clear abuse of process of law and has been filed in utter violation of Section 75 of the Act, 1969. The Additional District court has also erred miserably in entertaining the suit and granted exparte interim injunction in total violation of the provisions of the Act, 1969 and total violation of the mandatory provisions of Order 39 Rules 1 and 2 of the Civil Procedure Code.

6. On the other hand, Mr.Sethuratnam, learned Senior Counsel appearing for the first respondent has contended that the first respondent was forced to file the suit because of the inaction on the part of the respondents 2 and 3. Section 75 of the Act, 1969 is not applicable. Even assuming for the sake of argument that the said provision is applicable, the question of maintainability has to be decided by the trial Court. The trial Court's jurisdiction cannot be assumed to be ousted. The trial Court has every jurisdiction to decide even the question of maintainability. However, in respect of the granting of the interim order, he has not made out any argument as to whether the same is in accordance with the Order 39 of the Civil Procedure Code.

7. Mr.T.Murugesan, learned Government Pleader appearing for the second and third respondents on instructions submitted that there is absolutely no violation whatsoever in putting up of the Kalyana Mandapam by the petitioner. Immediately after receipt of the telegram by the first respondent and even after the disposal of the writ petition by this Court, the authorities, respondents No.2 and 3 have inspected the premises and found that there is no violation and hence the contention of the first respondent that the respondent authorities have not taken action as contemplated under the Act for violation of building construction by the petitioner is totally misconceived.

8. Mr.R.Thiagarajan, learned Senior Counsel in his reply has submitted that the petitioner has constructed the Kalyana Mandapam in accordance with the sanctioned plan. Even assuming that there are certain violations for which the authorities, respondents 2 and 3 are empowered to take action by way of imposing fine and it is for the authorities under the Act to take action. For that purpose, the first respondent cannot file a suit and totally injunct the petitioner from enjoying the property, which he has put up with heavy investment.

9. I heard the arguments of the learned counsel on either side and perused the material on record.

10. It is true that the Pondicherry Town and Country Planning Act is a Code by itself. Section 75 of the Act, 1969 provides that " Save as otherwise expressly provided under the Act, every order passed or direction issued by the Government or Board or notice issued by planning authorities under this Act shall be final and shall not be questioned in any suit or other legal proceeding. This Court in CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY VS. ABDUR REHMAN reported in 2002(2) CTC 230, while considering pari materia provision Section 101 of Tamil Nadu Town and Country Planning Act, 1971, which provides that " any decision or order of the Tribunal or the Government or the planning authority or other authority or any other officer under this Act, shall subject to any appeal or revision for review provided under this Act be final and shall not be liable to be questioned in any Court of law", has held that the Civil Court shall have jurisdiction to try all suits of civil nature except suits cognizance of which is either expressly or impliedly barred.

11. The exclusion of jurisdiction of the Civil Court in respect of the special provisions has been considered by the Supreme Court in several cases. The Constitution Bench in the case of DHULABHAI VS. STATE OF MADHYA PRADESH reported in AIR 1969 SUPREME COURT 78 has laid down the following principle regarding the exclusion of the jurisdiction of the Civil court:

1. Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

2. Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax

collected in excess of constitutional limits or illegally collected, a suit lies.
(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.
(7) An exclusion of jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

12. The scheme of the Act provided for constitution of the planning board and notifying planning area, constitution and appointment of planning authorities, the terms of office and meetings of the planning authorities. The Act provided for procedure for approval and preparation of development plan and control of the development and use of the land. The Act also provided for provision for revocation of the permission to develop the land and imposition of penalty for the development of the land, otherwise than in conformity with the Act. It further provided power to the authorities require removal of unauthorised development. Hence, the entire scheme of the Act is for the purpose of development of the area and the granting of permission for the purpose of developing the land i.e., granting of planning permission for putting up construction and taking action against violation or irregularities and the Act also provides for appeal provision to appellate authority by the aggrieved person. Hence, so far as the application for planning permission, refusal and any order passed thereon can be adjudicated under the provisions of the Act. However, a third party, who is being aggrieved by the action taken by the authorities under the Act cannot have recourse under t he Act as per the Scheme of the Act and as such, it cannot be said that he cannot move Civil Court for ventilating his grievance against the statutory authorities.

13. It is very well settled that the normal rule of law is that civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil Courts to try civil suit. The test adopted in examining such a question is (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. Where a statute gives finality to the orders of the special tribunals jurisdiction of the civil Courts must be held to be excluded if there is adequate remedy to do what the civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

This legal principle has been settled by the Supreme Court for nearly more than 30 years back in Dhulabhai' s case.

14. But so far as the present case is concerned, as stated in the summation of facts, the first respondent has moved this Court by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India under same set of allegations that the petitioner herein has violated the conditions under which the petitioner was granted building permission and the authorities under the Act has not taken any action against the petitioner by exercising their power under the Act and even the representation made by the first respondent herein has not been considered and disposed of. On the above allegations, this Court has directed the respondents 2 and 3 to consider the representation made by the first respondent and take action thereon. If at all the first respondent is aggrieved that the action taken by the statutory authorities, the respondents 2 and 3 is not in accordance with the provisions of the Act or aggrieved that the second and third respondents have in total disregard to the order passed by this Court in the writ petition have not taken any action for the alleged violation or aggrieved against the inaction on the part of the second and third respondents, proper course to the petitioner is to move this Court to have redressal in the procedure known to law. The tactics adopted by the petitioner to file a c ivil suit on the very same set of grounds on the premise that in spite of the order passed by this Court in the writ proceedings, the authorities have not taken any action cannot be considered as a proper course and nothing but abuse of process of law and in a way disgrace or lower the authority of this Court. It is also manifestly clear that the intention of the first respondent is only to put the petitioner in a stalemate condition by obtaining an order from any Court of law and the so called violation pointed out in the affidavit filed in support of the writ petition or in the plaint before the Additional District Judge, Karaikkal is not a bona fide reason. The process of Court must be used bona fide and properly and must not be misused or abused. It is the duty of the Court to prevent improper use of its machinery. The Court has to consider the jurisdiction of the Court as a means of oppression and process of the litigation is free from vexatiousness. This Court has held in the case of UNION OF INDIA VS. R.KARTHIKAI RAJAN AND OTHERS reported in 1999-3- LAW WEEKLY 471 that when the facts and the basis of the claim are identical, then the filing of the suit is clear case of abuse of process of Court. Hence, the conduct of the first respondent having approached this Court by way of writ petition and obtained an order against the respondents 2 and 3 and thereupon for the very same grounds and the very same allegations, filing a suit before the Civil Court is nothing but the abuse of process of law. It is not the case of the petitioner that he is not left with any other remedy. If at all his grievance is genuine, he would have very well taken the matter to this Court as to the inaction on the part of the respondents No.2 and 3. The Additional District Judge also without considering the averments contained in the plaint that the first respondent has already invoked the jurisdiction of this Court under Article 226 of the Constitution of India and obtained an order against respondents No.2 and 3 has mechanically granted the order of interim injunction restraining the respondents 2 and 3 from granting "no objection certificate". The said order has also been granted in total

violation of the mandatory provisions of Order 39 Rules 1 and 2 of C.P.C. The trial Court did not even think of granting of injunction order as granted by it would tantamount to injuncting the statutory authorities from doing their statutory function. Useful reference can be had to the judgment of this Court in the case of RT.REV DR. V.DEVASAHAYAM, BISHOP IN MADRAS CSI AND ANOTHER VS. D.SAHAYADOSS reported in 2002 (1) LAW WEEKLY 672. Hence, I am of the view that the interim order passed is in violation of the mandatory provisions, without recording any reasons for granting such an interim order and the action of the petitioner in moving the Civil Court is a blatant abuse of process of Court resulting in miscarriage of justice and it is imminently satisfy the parameters for invoking the jurisdiction under Article 227 of the Constitution of India.

15. In the result, the Civil revision petition is allowed quashing the interim orders granted by the Additional District Judge, Karaikkal in I.A.Nos.80 and 81 of 2002 in O.S.No.26 of 2002. Further as I am satisfied that the suit in O.S.No.26 of 2002 is an abuse of process of Court, I order that the said suit shall be struck off and expelled from the file of Additional District Judge, Karaikkal. Consequently, the connected C.M.P. is closed. The petitioner is entitled to his costs.

Index:Yes
Website: Yes
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To
1. The Additional District Judge,
Karaikkal,
2. The Record Keeper,
V.R.Section,
High Court,
Madras.